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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,345	01/10/2000	DAVID WAYNE MASKER	9D-HR-19109	4211

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EXAMINER

HARRIS, ERICA B

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/480,345

Applicant(s)

MASKER ET AL.

Examiner

Erica B Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,7,10-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,7,10-18 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on November 26, 2003. These drawings are approved.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6, 7, 10-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bussan et al. (4,934,541). In Figures 1-4, Bussan *et al.* disclose a shelf 12 for a refrigerator 10, said shelf comprising a substantially flat plate 20 including a first surface and a second surface 62 different from said first surface, and an outer periphery; at least one cross support 50 extending below and adhered to said plate first surface; a frame 58 adhered to said outer periphery of said plate second surface with a solid adhesive seal 80 retained in a channel on the underside of said frame defined by lip 60 and flange 70 and forming a spill containment area defined by sealing lip 60; and at least one side support 22,24 connected to said cross support and configured for attachment to said refrigerator on tracks 26,28, said frame adhered to said side support. The frame further comprises a bracket 32 connected to said side support 22,24, wherein said frame comprises molded plastic. Bussan further teaches the application of

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adhesive to said frame and then adhering said frame to said second surface of said plate in column 3, lines 50-58.

Bussan further sets forth that the cross support 50 and side supports 22,24, are integrally formed in the lower portion of the frame. As disclosed above, Bussan teaches that the frame 58 is adhered to the outer periphery of said plate second surface with a solid adhesive seal 80. Hence, the cross support and side supports are adhered to the plate by virtue of being integrally formed with the frame. Further, the fact that the elements are integrally formed does not preclude them from performing the function required by the claims.

4. Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kane *et al.* (5,441,338). In Figures 39-46, Kane *et al.* disclose a shelf 1000 for a refrigerator comprising a plate 1002 including first and second surfaces and an outer periphery 1004; first and second side supports 1012,1014 secured to said plate 1002 first surface; at least one steel cross support 1016,1018 connecting said first and second side supports 1012,1014 and separated from said plate 1002 (column 12, lines 3-4); and a frame 1006 adhered to said second surface of said plate, said frame extending along said plate outer periphery 1004 to form a spill containment area.

Allowable Subject Matter

5. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter:
This claim has been allowed over the prior art of record because while the prior art of record

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Kane *et al.* and Bussan *et al.* each teach a shelf for a refrigerator, wherein the cross support is either separate from the frame or integrally formed with the frame neither teaches nor suggests having a cross support that is separate from the frame and then joined to a first surface of the plate of the shelf by an adhesive.

Response to Arguments

7. Applicant's arguments filed November 26, 2003 have been fully considered but they are not persuasive.

With respect to applicants' remarks concerning the apparent failure of Bussan *et al.* (Bussan) to teach all of the limitations of the cited claims, the examiner maintains that the rejection is proper. Bussan discloses all of the limitations of the claims. As noted by applicants, Bussan discloses an upper and a lower frame joined by a weld that "sandwiches" a plate therebetween and has a layer of adhesive applied under the top layer of said frame to form a seal between the top portion of the frame and the plate.

However, contrary to applicants' comments, Bussan does set forth a cross support 50 and side supports 22,24. The cross support and side supports are integrally formed in the lower portion of the frame. The fact that the elements are integrally formed does not preclude them from performing the function required by the claims.

Applicant seems to be arguing direct connection between the plate, the cross support, and an adhesive, but applicant has failed to set forth this requirement in the claims. The Office maintains that the Section 102 (b) by Bussan is appropriate and reads on the invention as claimed. If direct connection of the adhesive, plate and cross support is required, applicant

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should incorporate claim language requiring the adhesive to be placed between the cross support and the plate.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bird *et al.* (5,429,433) and Shanok *et al.* (5,677,030) are cited to further illustrate the current state of the art of shelves with spill containment areas for a refrigerator.

9. Applicant's amendment, i.e., newly added claims 21-23 wherein the cross support is required to be separate from the plate, necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica B Harris whose telephone number is 703-306-9071. The examiner can normally be reached on 9-5:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Erica B. Harris
March 2, 2004



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
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